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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ANIBAL RODRIGUEZ, JULIAN
SANTIAGO, and SUSAN LYNN
HARVEY, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No.: 3:20-cv-04688-RS

**PLAINTIFFS' MOTION TO QUASH
SUBPOENA TO SUSAN HARVEY**

Judge: Hon. Richard Seeborg

Date:

Time:

Location:

1 Plaintiffs respectfully submit this motion seeking to quash a subpoena served by Google
2 on Susan Harvey. As set forth below, with this subpoena, Google seeks to impose an undue and
3 unnecessary burden on Ms. Harvey's mental and physical health.

4 As set forth in the Declaration of Susan Harvey (attached as Ex. A), and the Declaration
5 of James Lee (attached as Ex. B), Ms. Harvey suffered three strokes in the two months
6 immediately after her October 27, 2022 deposition in this case. One of Ms. Harvey's doctors
7 believed that the stress of the deposition contributed to the strokes, each of which caused Ms.
8 Harvey to suffer temporary paralysis. Since her first (and subsequent) strokes, Ms. Harvey has
9 remained in her doctors' care and been monitored and treated to reduce the likelihood of further
10 strokes and restore her health.

11 Ms. Harvey has over many years taken seriously her obligations as a class representative,
12 and she has over the last few weeks made every possible effort to prepare herself to testify at trial
13 – even at possible risk to her health. Ms. Harvey believes in this case, in the merits of her claims,
14 and in the serious harm caused by Google. Out of fear that her doctors would restrict her from
15 testifying, Ms. Harvey did not seek their clearance to travel to San Francisco and testify at trial.

16 Last week, Ms. Harvey arrived in San Francisco to participate in trial preparation sessions
17 with Plaintiffs' counsel. On August 15, 2025, while engaged in one of these sessions, Ms. Harvey
18 hyperventilated, had trouble breathing, cried from anxiety, and could not continue the session.
19 During that session, on August 15, 2025, she revealed to counsel for the first time the strokes she
20 suffered following her deposition. Plaintiffs' counsel was unaware of those strokes before
21 August 15, 2025. When Ms. Harvey and counsel met again on August 16, 2025, she was again
22 unable to continue with her preparation, with increased anxiety and diminished recall and speech.

23 On August 16, 2025, in light of her level of anxiety and stroke history, Mr. Lee and other
24 Plaintiffs' counsel met with her to make sure she would be capable of testifying at trial. She
25 agreed she was not comfortable and could not testify at trial. Because she was too anxious to fly
26 or drive a rented car back to her home in Fresno, counsel hired a car to drive her back home.

1 Counsel for Plaintiffs immediately informed Google’s counsel of the facts above and that
2 Ms. Harvey would not be called to testify at trial. Counsel for Plaintiffs requested agreement to
3 use Ms. Harvey’s videotaped deposition. Counsel for Google initially responded very
4 professionally, thanking Plaintiffs’ counsel for the prompt notification and saying they would
5 take the proposal under advisement. However, within hours and without any further discussion,
6 Google sent someone to her home, to serve her a subpoena in person, at 9:00 P.M. at night,
7 commanding she return to San Francisco to testify at trial on August 19, 2025, (a date Google
8 was well-aware was not a day Ms. Harvey would testify). Unsurprisingly, being served with the
9 subpoena caused Ms. Harvey additional anxiety and stress.

10 On timely motion, an issuing court must quash or modify a subpoena that subjects a
11 person to “undue burden.” Fed. R. Civ. P. 45(c)(3)(A)(iv). An evaluation of undue burden
12 “requires the court to weigh the burden to the subpoenaed party against the value of the
13 information to the serving party” *Moon v. SCP Pool Corp.*, 232 F.R.D. 633, 637 (C.D. Cal.
14 2005). The inquiry depends on the facts of the case, and the movant bears the burden of
15 persuasion. *Green v. Baca*, 226 F.R.D. 624, 653 (C.D. Cal. 2005).

16 Quashing the subpoena is clearly warranted in light of Ms. Harvey’s health and the risk
17 that the anxiety and stress associated with testifying at trial could cause another stroke or
18 otherwise negatively impact her. Plaintiffs do not discount that her testimony as a class
19 representative is relevant, but precisely because this is a class case, her testimony is redundant to
20 the testimony of the other two class representatives. Moreover, her video deposition is available,
21 and any value of her live testimony cannot outweigh the risk to her health and wellbeing. In
22 similar circumstances, courts have found “undue burden” sufficient to quash subpoenas to testify.
23 *See, e.g., Reger v. All Things Gel, LLC*, 2024 WL 4635530, at *2 (S.D. Fla. Sept. 6, 2024) (ruling
24 three days before trial was scheduled to begin that witness “has shown ‘undue burden’ based on
25 his medical inability to attend the trial”); *Electrolux N. Am., Inc. v. Performance Metals, Inc.*,
26 2021 WL 601056, at *1 (S.D. Ind. Feb. 12, 2021) (finding undue burden sufficient to squash
27 subpoena for pregnant witness who argued testifying would cause her great anxiety because “the

1 need to protect Ms. Mahoney and her unborn child from potential harm outweighs Plaintiff's
2 discovery needs in this case").

3 Google will not suffer prejudice from Ms. Harvey being unable to testify at trial. There
4 is "no requirement that all class representatives testify at a trial—particularly in a case like this
5 one, in which the conduct of the defendant, rather than what happened to the plaintiffs, is the
6 crux of the matter." *In re Namenda Direct Purchaser Antitrust Litig.*, 2019 WL 6242128, at *2
7 (S.D.N.Y. Aug. 2, 2019). Class representatives Anibal Rodriguez and Julian Santiago will still
8 be testifying at trial. Ms. Harvey's cumulative testimony is not required "in a trial at which the
9 parties are going to be strictly time-limited in their presentations, [as] it would consume time
10 more profitably spent on matters that relate to the merits—which class representation does not."
11 *Id.* Moreover, Plaintiffs have agreed that Ms. Harvey's videotaped deposition testimony can be
12 played at trial, testimony she provided *before* she suffered from health, memory, and speech
13 issues resulting from her strokes, which will give the jury the opportunity to judge her testimony,
14 credibility, and demeanor.

15 While testimony by witnesses in open court is preferred, Rule 32 permits the use of
16 deposition testimony at trial of a witness—even a party—in lieu of personal appearance "if the
17 court finds . . . that the witness cannot attend or testify because of age, illness, infirmity, or
18 imprisonment." Fed. R. Civ. P. 32(a)(4)(C); *Richmond v. Brooks*, 227 F.2d 490, 492-93.
19 Numerous courts have permitted testimony to be presented via deposition transcript or video
20 recording where a party or witness has a medical condition that precludes their attendance and
21 live testimony at trial. *See Lacy v. McArdle*, 2023 WL 4581759, at *15 (W.D. Wis. July 18,
22 2023) (granting motion to introduce defendant's deposition at trial in lieu of live testimony where
23 he suffered a stroke the year before and suffered other physical and cognitive disabilities as a
24 result).¹ As one court recognized, "[u]ndoubtedly, Defendants may . . . face hardship in their

25 ¹ See also *Hoffmann Bros. Heating & Air Conditioning, Inc. v. Hoffmann Air Conditioning &*
26 *Heating, LLC*, 2022 WL 1786530, at *2 n.2 (E.D. Mo. June 1, 2022) (rejecting defendants'
27 contention that witness's declarations of age and infirmity were not specific enough to find him

1 inability to elicit live testimony at trial. But Plaintiff assumes an equal ‘tactical burden [] by . . .
 2 proceeding to trial in her absence,’ a burden expressly contemplated by ... Rule [32] itself.”
 3 *Glass v. Metro. Washington Airport Auth.*, 2024 WL 1558712, at *3 (E.D. Va. Apr. 10, 2024).

4 Plaintiffs respectfully request that the Court enter an order quashing the subpoena to
 5 Susan Harvey.

6 Dated: August 17, 2025

By /s/ Mark C. Mao

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 20 “unavailable” and noting, “[a]lthough the witnesses will not appear live at trial, Defendants
 21 remain able to make arguments about their credibility to the jury and have had a full opportunity
 to develop such arguments during their depositions.”); *Est. of Barnwell v. Grigsby*, 801 F. App’x
 22 354, 372 (6th Cir. 2020) (affirming court’s finding that plaintiff was unavailable within the
 meaning of Rule 32(a)(4)(C) when she lost her voice the night before trial); *v Sheetz v. Wal-Mart*
 23 *Stores, Inc.*, 2018 WL 8344383, at *1-2 (M.D. Pa. Mar. 28, 2018) (allowing use of plaintiff’s
 deposition transcripts in lieu of live testimony where he doctor submitted a declaration stating
 24 “she would ‘not be able to [withstand] court proceeding[s] due to mental instability and
 difficulties [coping] with stress’”); *Elsevier, Inc. v. Comprehensive Microfilm & Scanning Servs.,*
 25 *Inc.*, 2013 WL 5797639, at *3 (M.D. Pa. Oct. 28, 2013) (“[C]ross-examination is by its nature a
 stressful experience, whether done inside or outside the courtroom. Considering [witness’s severe
 26 coronary artery disease and congestive heart failure], the Court finds the danger that such stress
 might cause to be too pronounced.... No deposition under these circumstances is worth risking a
 27 man’s life . . .”).

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